FILED
JUN 7 - 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-1141

In the Supreme Court of the United States

OSCAR B. SHIRANI,

Petitioner,

v.

UNITED STATES DEPARTMENT OF LABOR,

Respondent,

and

EXELON CORPORATION,

Intervening Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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Samples of Petitioner's signature from record ..... 2a - 4a

BEST AVAILABLE COPY

I. The Circuit Conflict On The Important Issue Of The Applicable Evidentiary Standards For ERA Claims Is Significant And Is Squarely Presented.

1. Contrary to Respondent's argument that the issue of the ERA standards of proof is not presented by the decision below (Opp. 7-8), the Seventh Circuit did reach and explicitly decide this issue, holding that the Title VII/ *McDonnell Douglas* burdens apply. This is shown by the standards of proof recited, the phrasing used in applying the burdens of proof, that the decision below was affirming the ARB decision which applied the Title VII standards, and the *stare decisis* effect of the governing circuit precedent of the published 2005 *Hasan*[1] decision.[2]

The decision below recited the applicable standards of proof in two paragraphs. (Pet. App. 4-5). The standards of proof under which the court reviewed this claim are part of the reasoning necessary to the result of its decision, without which the basis of the decision would be impaired, and are therefore part of the "holding".[3] But while the decision

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[1] *Hasan v. U.S. Dep't of Labor*, 400 F.3d 1001 (7th Cir. 2005).

[2] This issue is not waived (Opp. 7) because Petitioner raised it in the court below in the opening brief by presenting the analysis within the framework of the amended ERA burdens of proof, FED. R. APP. P. 28(a)(9)(B) (the applicable standard of review may appear in the discussion of the issue), Respondent DOL did not argue waiver of the proper ERA burdens of proof in its response brief, and the decision below addressed the ERA burdens of proof, and did not put forth a holding or discuss waiver of burdens of proof. *Porco* does not support Respondent's waiver claim as that case held petitioner's mootness argument waived because it was first raised in the reply brief. *Id.*

[3] *See, e.g.*, 18 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 134.03[2] (3d ed. 2006), at 134-30 (reasoning necessary to holding is part of holding) and ¶ 134.03[2] at 134-31, 32 (one way to distinguish dictum from reasoning necessary to holding is to determine whether statement in question could be deleted without impairing basis of decision); *see also, e.g., Int'l Truck & Engine Corp. v. Bray*, 372

below does recite the amended "contributing factor," it recited no standard for the employer's ERA burden of proof (Pet. App. 4-5). The court then applied the burdens of proof it recited, using the phrase "based on" twice for the employee's evidence (Pet. App. 6, "Shirani's termination was not *based on* his protected activity" and Pet. App. 8 "an act that discriminated against him *based on* his status as a whistleblower") (emphasis added), instead of the ERA "a contributing factor." The court also applied only the *McDonnell Douglas* burden of production to the employer's evidence (Pet. App. 5 "Shirani was required to establish that the officials who decided not to hire him as a manager during the internal audit reselection process knew of the protected activity", and Pet. App. 26, ARB decision, reciting *McDonnell Douglas* failure to hire test as applicable legal standard), entirely omitting the ERA "clear and convincing" employer's burden of persuasion.[4]

Respondent's argument (Opp. 8) that the decision below was not following the *Hasan* circuit precedent is incorrect. The Court of Appeals in the decision below was following its *Hasan* precedent, as the factors required for the doctrine of *stare decisis* to apply were all met.[5] [6] While

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F.3d 717, 721 (5th Cir. 2004) (statement is dictum if can be deleted without seriously impairing analytical foundations of holding, and is not dictum if necessary to result or constitutes explication of the governing rules of law), and *Tate v. Showboat Marina Casino P'ship*, 431 F.3d 580, 582 (7th Cir. 2005) ("holding" of a case, for purposes of *stare decisis*, includes not only facts and outcome of case, but also reasoning essential to its outcome).

[4] This was the evidentiary framework used by the DOL prior to the 1992 ERA amendments, *see, e.g., Samoduro v. General Physics Corp.*, 89 ERA-20, D & O of SOL, at 9-10 (Nov. 16, 1993) (DOL applying *McDonnell Douglas* "refusal to hire" Title VII analysis).

[5] *See* 18 MOORE'S FED. PRAC. ¶ 134.02[1][c], at 134-16 ("[t]he published decision of a panel of a court of appeals is a decision of the court and carries the weight of *stare decisis*").

the Seventh Circuit allows one panel to overturn the circuit's precedent for "compelling reasons",[7] [8] the decision below nowhere overruled the *Hasan* decision. *Hasan* does *hold* that the Title VII standards apply to ERA claims because for two full paragraphs after the first sentence beginning "[t]he parties agree", the court explained how it reached that conclusion and how the Title VII framework applied to the ERA claim at bar. *Id.*, 400 F.3d at 1004; note 3, *supra*. Also proving this holding is the court's combining the ERA case with two Title VII retaliation cases into one published opinion to review and harmonize one legal standard for retaliation. *Hasan*, 400 F.3d at 1003.

2. Respondent's claims that the phrase "based on" used in the decision below is the equivalent level of causation as the ERA's "a contributing factor" (Opp. 9, 10) are unsupportable. Beginning in 1989, Congress lowered the Title VII employee burden of persuasion on causation in four federal whistleblower statutes to "a contributing factor".[9] Congress defined "a contributing factor": "[t]he

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[6] *Id.*, ¶ 134.04[2] at 134-37 (for *stare decisis* to be applied, an issue of law must have been heard and decided), and *Id.*, ¶ 134.05[5] at 134-44.1 (factors for *stare decisis* to apply are: there must be a holding, the decision must involve an issue of law, the decision must be by a majority of the court rendering the decision, and the decision must be from the same court that is seeking to apply the *stare decisis* doctrine).

[7] *Russ v. Watts*, 414 F.3d 783, 788 (7th Cir. 2005).

[8] *In re Bentz Metal Prods. Co., Inc.*, 231 F.3d 1029 (7th Cir. 2000) (vacated on other grounds, No. 00-1320, slip op. (7th Cir. June 7, 2001)); *Goshtasby v. Bd. of Trustees*, 141 F.3d 761, 766 (7th Cir. 1998) (the Seventh Circuit follows the doctrine that a federal court must give considerable weight to its prior decisions, unless overruled or undermined by decisions of a higher court, or other supervening developments, such as statutory overruling).

[9] These are: the ERA (nuclear whistleblower cases), 42 U.S.C. § 5851(b)(3)(A), (C) and (D), the Whistleblower Protection Act of 1989 (WPA) (governing most federal employee cases), 5 U.S.C. § 1221(e), the Aviation Whistleblower Protection Provision, 49 U.S.C. § 42121,

words 'a contributing factor' . . . [mean] any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision."[10] Further, there is ample evidence from the Title VII caselaw and statutory language that "based on" is one phrasing of the Title VII causation level.[11] The Title VII "based on" is the "but-for"

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and the FDIC whistleblower law, (governing most banking related whistleblower cases), 12 U.S.C. § 1831j(f). *See* STEPHEN M. KOHN, CONCEPTS AND PROCEDURES IN WHISTLEBLOWER LAW, Quorum Books (2001) at 274-76.

[10] *Marano v. DOJ*, 2 F.3d 1137, 1140 (Fed. Cir. 1993) (discussing legislative history of WPA and applying "contributing factor" test, "[t]his test is specifically intended to over-rule existing law which requires a whistleblower to prove that his protected conduct was a "significant", motivating", "substantial", or predominant", factor in a personnel action in order to overturn that action") *quoting* 135 CONG. REC. 5033 (1989) (WPA Explanatory Statement). *See also, Rouse v. Farmers State Bank of Jewell*, 866 F. Supp. 1191, 1207-08 (N.D. Iowa (1994) (comparing Title VII with new statutory framework); *Haley v. Retsinas*, 138 F.3d 1245, 1249 (8th Cir. 1998) (holding "a contributing factor" in FDIC whistleblower case could be met if employer committed adverse action for both legitimate and illegitimate reasons).

[11] *See, e.g.*, line of 7th Circuit Title VII retaliation cases citing *Radue v. Kimberly-Clark Corp.*, 219 F.3d 612, 616 (7th Cir. 2000) (emphasis added) (one way to prove Title VII retaliation is by direct evidence of discrimination, which "essentially requires admission by decision-maker that his actions were *based on* the prohibited animus"); *Ineichen v. Ameritech*, 410 F.3d 956, 962 (7th Cir. 2005) (emphasis added) (in Title VII race and sex discrimination claims, plaintiff "failed to present sufficient direct evidence to avoid summary judgment on her claim that employer discriminated against her *based on* her interracial relationship"); *see also, e.g., DeWalt v. Carter*, 224 F.3d 607 n.7 (7th Cir. 2000) (emphasis added) (in section 1983 claim for discrimination, court used phrase to describe causal link element, "*based on* membership in a definable class, namely, based on his race"); *Troupe v. May Dep't Stores Co.*, 20 F.3d 734, 736 (7th Cir. 1994) (emphasis added) (in Pregnancy Discrimination Act case, court used phrase describing causal element, "characteristics *on which* it is forbidden *to base*"). See also, e.g., language of Civil Rights Act of 1964, § 701 *et seq.*, 42 U.S.C. § 2000e *et seq.*, 2000e-2(a)(1), section 703 (emphasis

causation level,[12] which is, by definition, a distinctly higher level of proof for the employee to meet than the "contributing factor" level of "any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision."[13] Also, the decision below used phrasing for the employer's evidence which affirms a burden of production only,[14] instead of applying the ERA phrase, "clear and convincing".[15] See decision below, Pet. App. 4, "Shirani applied for a management position for which he was previously warned he might not be qualified" and Pet. App. 6, "[t]he head of internal audit who did not select Shirani for the management job for which he applied", affirming this central conclusion of disputed fact[16] which was reached by the ARB under the Title VII

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added), banning "failure or refusal to hire or discharge or discriminate . . . *because of* person's race, etc.", and 2000e-3(b) making it unlawful for employer to advertise indicating a preference "*based on*" race, etc.

[12] *E.g.*, *Hartman v. Moore*, 547 U.S. 250, 164 L. Ed. 2d 441, 453-54 (2006) (determining causation in retaliatory-prosecution action, the *Mt. Healthy* level of causation is the "but-for" cause without which the adverse action would not have been taken).

[13] *See, e.g., Rouse,* 866 F. Supp. at 1207-08.

[14] *Texas Dep't Community Affairs v. Burdine*, 450 U.S. 248, 254-55 (1981) (employer's burden is not one of persuasion but only of production of explaining nondiscriminatory reasons for its action); *Kahn v. U.S. Sec. of Labor*, 64 F. 3d 271, 278 (7th Cir. 1995) (in ERA case "the employer need not persuade the court; the burden is simply one of production").

[15] The Secretary of Labor has previously applied this standard to ERA cases in accord with the 1992 ERA amendments, but did not explain its departure from that standard in this case. *See, e.g., Timmons v. Mattingly Testing Serv.*, 95-ERA-40, (June 21, 1996), D & O of Remand by ARB at 16, applying this Court's *Grogan* analysis for the "clear and convincing" evidence standard, *Grogan v. Garner*, 498 U.S. 279 (1991) (discussing "clear and convincing" evidence standard).

[16] During the financial services reorganization in the fall of 2001 (Opp. 4), the employer eliminated the senior/principal financial auditor position Petitioner had held since he was hired there and replaced it

burden of production, not "by clear and convincing" evidence. (Pet. App. 26, 74-75 "respondent bears only the burden of production of rebuttal evidence"). See Pet. App. 25, "[h]e did apply for the E-4 principle/ manager position. Tr. 490-491; RX 35." Also, when the Seventh Circuit applies the "contributing factor" causation level it uses the phrase "a contributing factor", not "based on", and when it applies the "clear and convincing" burden of persuasion to the employer's evidence, it uses the phrase "clear and convincing" or, for example, whether the employer's evidence is "so compelling as to remove all doubt" as to its actions in the absence of the protected activity.[17]

3. Respondent's claim that the circuit conflict is reconcilable (Opp. 11-12) is without merit. The other four circuits reached the issue of law of the applicable ERA burdens of proof, very different burdens from those applied in the *Hasan* decision, in the context of determining the governing evidentiary standards for the case before them. (Pet. 5-10). Their statements on the ERA burdens of proof are therefore part of their authoritative "holdings."[18]

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with positions with requirements he could never meet. (Pet. C.A. Br. 26). Another employer's Manager sought him out before the application deadlines, and assured him he would be safe applying for his own job again, even though he could not meet the new requirements, (Pet. C.A. Br. 26, Tr. 601-02), which is the job he interviewed for in October 2001. (Pet. C.A. Reply Br. 22, Tr. 490-91). His own senior/principal financial auditor position had never been a Management-level position. (Pet. C.A. Reply Br. 19-20, Tr. 490-91).

[17] *See, e.g., Frobose v. American Sav. & Loan*, 152 F.3d 602, 612-13, 617 (7th Cir. 1998) (in reversing summary judgment for defendant in FDIC whistleblower retaliatory discharge claim, court applied amended burdens of proof using phrase "contributing factor" and distinguishing it from a "substantial or motivating factor", and using phrase "clear and convincing" or "so compelling as to remove all doubt").

[18] See note 3, *supra*.

4. The ERA employee protection is designed by Congress[19] [20] and the NRC to be integral in the system of assuring the safety of this Nation's nuclear power plants. See NRC policy that the nuclear industry and employees have first line responsibility for safety, and so "the perception by fellow workers that raising concerns has resulted in retaliation can generate a chilling effect that may discourage other workers from raising concerns . . . [which] is detrimental to nuclear safety."[21]

5. Even if the circuit conflict is presented less than perfectly by the decision below, it should be resolved with this case because of the ERA's central role in nuclear safety.[22] Neither in the 2005 *Hasan* decision nor in the instant case did the Seventh Circuit acknowledge that Congress had added the high burden of persuasion of "clear and convincing" to the employer's ERA case, and applied the "but-for", Title VII level of causation to the employees'

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[19] H. REP. NO. 102-474(VIII), at 79 (1992), *reprinted in* 1992 U.S.C.C.A.N. 2297 (*see* Pet. 22).

[20] S. REP. NO. 848, 95th Cong., 2d Sess. 29 (1978), *reprinted in* 1978 U.S.C.C.A.N. 7303, 7304. *See also*, *English v. Gen. Elec. Co.*, 496 U.S. 72, 82-83 (1990); *Wheeler v. Caterpillar Tractor Co.*, 108 Ill.2d 502, 511 (Ill. 1985) (protection of citizens from the hazards of radioactive material is as important and fundamental a public policy as protecting them from crimes of violence).

[21] "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation; Policy Statement", 61 Fed. Reg. 24,336 (May 14, 1996), "Background", available at http://www.nrc.gov/about-nrc/regulatory/allegations/scwe-frn-5-14-96.pdf.

[22] *E.g.*, *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 300 (1986) (granting review, the Court referred to "the importance of the case, and the divergent approaches of other courts to the issue"); *English v. General Electric Co.*, 496 U.S. 72, 78 (1990) ("because of an apparent conflict with a decision of the First Circuit"), and *Posters 'N' Things, Ltd. v. United States*, 511 U.S. 513, 516 (1994) (certiorari granted "[b]ecause of an apparent conflict among the Courts of Appeals").

evidence in both cases. Because the circumstances were present here to overturn the *Hasan* precedent – statutory overruling by the 1992 ERA amendments[23], and the court did not do so, it is likely that the court will continue to apply the Title VII burdens of proof in reviewing ERA cases, undermining employee protection from retaliation and thus undermining nuclear safety. (And this problem will recur nationally due to the DOL manual. Pet. 20-21.)

II. Respondent's Attempt to Re-frame This Appeal Into One Of Fact Ignores That Key Conclusions Of Fact Were Determined Under Incorrect Legal Standards.

Respondent's attempts to defeat review by re-framing Petitioner's error of law appeal as one of error of fact (Opp. 12-13) ignores that dispositive conclusions of fact were determined by the ARB and affirmed in the decision below under the wrong burdens of persuasion. (Opp. 12-13). 1) there were numerous statements in the record of employer anger at Shirani's audit activity (all raised in the opening brief before the court below), especially that the Exelon Licensing Manager was very, very upset about Shirani's attending the Holtec marketing meeting in December 2000 where the NRC learned about his dry cask audit, only one week before Exelon Officer Gillis offered him the job outside of nuclear, (Pet. C.A. Br. 11, 24, Tr. 387-90, 685), and said to him words to the effect of "who the hell invited you to go there?", (Pet. C.A. Br. 8, Tr. 402), all to which the ARB and court below applied the Title VII "but-for" burden of persuasion (see I.1. and 2. above). 2) that the job application for the manager position contains a signature which is an obvious forgery that looks nothing like Shirani's (Pet. 18), about which he testified in unrebutted

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[23] 18 MOORE'S FED. PRAC. ¶ 134.06[1][c], at 134-45,46 (to set aside statutory interpretation case, special justification required, such as further Congressional action that removes conceptual underpinnings of prior decision); *Goshtasby*, 141 F.3d at 766.

testimony, "this is not my signature". See signatures in this Appendix. (Pet. C.A. Reply Br. 18-23, Tr. 422, RX 35.)[24] The employer provided no rebuttal evidence that the signature *is* Shirani's. See note 16, *supra*. The licensing manager's anger is retaliatory animus that clearly amounts to *more than* a contributing factor in the adverse personnel actions,[25] and it is highly unlikely that the signature on the employer's evidence, RX 35, could have persuaded the factfinder by "clear and convincing" evidence.[26] Thus, it is likely that these findings of fact "were influenced by this mistaken view of the law", warranting reversal on review.[27]

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[24] Petitioner did not waive this argument before the court below, since he raised it in the opening brief at 34, "Exelon cannot prove by clear and convincing evidence that it would have terminated Shirani's employment in the absence of his high profile GENE audit and contact with the NRC inspector regarding his Holtec dry cask audit", both respondents discussed the conclusion that he applied for the manager position with this document – RX 35, and the decision below reached this issue in its holdings, see above , I.2. at 5 and Pet. App. 4, 6.

[25] *See, e.g., Pillow v. Bechtel Constr. Inc.*, 87-ERA-35, D & O of Remand by SOL, at 13, (July 19, 1993) (foreman becoming angry after employee raised safety concerns is direct evidence of discriminatory motive), and *Mandreger v. Detroit Edison Co.*, 88-ERA-17, D & O of SOL, at 19 (Mar. 30, 1994) (telling employee it was wrong to contact the NRC because management could have solved the problem is direct evidence of discriminatory animus).

[26] *See, e.g., Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000) (evidence that employer's justification for adverse action is untrue may itself constitute "persuasive" circumstantial evidence of intentional discrimination); *Aka v. Washington Hospital Ctr.*, 156 F.3d 1284, 1292 (D.C. Cir. 1988) (en banc) ("a lie is evidence of consciousness of guilt").

[27] *See, e.g., United States Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711 (1983) (vacating judgment for defendant and remanding because lower court applied incorrect standard in last step of Title VII burden-shifting framework – "it is not clear that its findings of fact in favor of [defendant] were not influenced by its mistaken view of the law"); 5 U.S.C. § 706(2)(A) (reviewing court shall hold unlawful and set aside agency conclusions found to be not in accordance with law);

Respondent's claim that the ERA burdens of proof were not reached in the decision below because the ARB found Petitioner failed to meet the knowledge element of the prima facie case (Opp. 9, 10), is not true. The scope of appellate review is broad, and the decision below reached and issued holdings on the full cause of action (as did the ARB and ALJ which also did not stop their analysis at the knowledge element).[28] [29] See I.1, *supra*.

Respondent repeats the serious error, made by both the ARB and court below, of refusing to allow that the knowledge element was met because the supervisor who made the termination decision (Caya) admitted she knew that one of Shirani's quality assurance audits was received unfavorably. (Opp. 13). Quality assurance audits constitute "protected activity".[30] Nothing more is required.

Petitioner clarifies that the decision below ignored the first alternative of his two-part argument about returning to nuclear. (Pet. 17) (Pet. C.A. Br. 31).

CONCLUSION

The petition for a writ of certiorari should be granted.

Old Ben Coal Co. v. Director, OWCP, 62 F.3d 1003, 1007-08 (7th Cir. 1995) (remanding agency decision that applied wrong legal standard).

[28] *Pozzie v. U.S. Dep't of Hous. and Urban Dev.*, 48 F.3d 1026, 1029 (7th Cir. 1995) (presumptively valid agency decision must be reviewed with substantial inquiry, or thorough, probing, in-depth review).

[29] Petitioner mistakenly stated as an aside in his opening brief below, p. 34, that the ARB did not reach the issue of the ERA burdens of proof.

[30] 42 U.S.C. § 5851(a)(D) and (F) (protected activity includes: if an employee commences a proceeding for enforcement of any requirement imposed under the Atomic Energy Act of 1954 and participated in any other manner in such a proceeding or in any other action to carry out purposes of the Act). All quality assurance activity is "protected activity" because licensees must maintain a quality assurance program and that the personnel have the authority and freedom to identify problems and provide solutions. 10 C.F.R. § 50.34(a)(7) Appx. B; *Dunham v. Brock*, 794 F.2d 1037, 1038 n.1 (5th Cir. 1986).

Respectfully submitted.

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JUNE 2007

APPENDIX

Rep. EXHIBIT 35

-1a-

EXELON CAREER OPPORTUNITY SYSTEM
ATTACHMENT 7.1 - SELF-NOMINATION FORM

Requisition Position Title: Principal/Manager, Audit Requisition Number: 201296

Name:	Oscar B. Shirani	Current Title:	Principal Auditor
Soc. Sec. No.:	579-90-6308	Salary Grade:	E4
Employee ID:	752890	Current Pay Rate:	47 /hr. 98 /yr.
Department / Work Location:	Corporate Finance, 38th Floor, Bank 1, Chicago	Performance Rating:	1B_(B)_: year 2000_____ 2A (B)_: year_1999 1A (A)__ Year 1998____
Work Phone:	312-394-3081	Dept Head/Manager:	Ms. Ellen Caya (2001)
Other Phone:	630-790-9650 Home 630-695-9065 Pager	Dept Head Phone:	312-394-3728

ELIGIBILITY CRITERIA:

	YES	NO
I am classified as a "regular" full or part-time employee.	☒	☐
I have been rated at least "meeting expectations or equivalent" on my most recent performance evaluation, if such appraisal is conducted, and am currently meeting expectations.	☒	☐
I meet the qualifications as specified in the Exelon Career Opportunity Announcement.	☒	☐
I have been in my current position at least one year (unless this provision is waived by my current department head / manager). I have been in this department for 18 months.	☐	☒

All of the information disclosed on this SELF-NOMINATION FORM is true and correct. I understand that misrepresentation of or incomplete information on this form will remove me from consideration.

Employee Signature: _____ Date: 10/12/01

THIS SECTION MUST BE COMPLETED WITH SIGNATURE BY YOUR DEPARTMENT HEAD / MANAGER OR DESIGNEE, PRIOR TO THE REMOVAL DATE FOR CONSIDERATION

X Approved—Submit to Exelon Employee Service Center
I understand that the above employee may be considered for the position. The employee has been meeting expectations in his/her current position. The employee has been in their position for at least one year. (If no, I agree to waive this requirement). I agree to negotiate a release date with the Hiring Manager should this employee be extended an offer.

Department Head / Manager Signature*: Ellen Caya Date: 10/16/01
*AN ELECTRONIC COPY FORWARDED FROM YOU WITH A NOTE WILL SUBSTITUTE FOR A SIGNATURE

_____Not Approved—Return to local Human Resources Office
Reason for non-release:

ERA 00054

Department Head / Manager Signature: [redacted] Oscar Shirani Date: 10/16/01

Submit one completed SELF-NOMINATION FORM and resume/resume template for each position to the Exelon Employee Service Center by the removal date in order to receive consideration. Fax: 630-684-3409 Outlook: "Employee Service Center" E-mail: EmployeeServiceCenter@ucm.com Company Mail: Business Resource Center / 2011 Swift Drive / Oakbrook, IL 60521 *AN ELECTRONIC COPY FORWARDED FROM YOUR DEPT HEAD/MANAGER WITH A

BEST AVAILABLE COPY

-2a-

58 EOC

COMMIT FOR RESULTS

This form is meant to be used with the CFR Resource Guide and should not be filled in without the Resource Guide as a reference.

Name: Oscar Shirani Year: 1999

Copy

Personal Contribution Statement

Your ultimate commitment to the organization is to satisfy this statement. This statement defines your contribution to the organization and answers the following four questions. Refer to the Personal Contribution Statement worksheet in the Resource Guide for additional help.

- *What are the key products or services I provide for my site?*
- *What potential do I have to impact the overall performance of my site?*
- *In what ways do I make others successful?*
- *Who benefits when I perform my job well?*

Type your Personal Contribution Statement Here....

See attached page

Signatures indicate that commitments were set and agreed upon.

Oscar Shirani — Individual's Signature — Date 9/9/98

Supervisor's Signature — Date 12/9/98

Manager's Signature — Date

Instructions for tranfer and retention of Commitment Form:
If the individual tranfers during the year, the current supervisor should have a final performance meeting with the individual and complete the appropriate area of the Form to indicate which meeting(s) - Planning or Year-end Assessment - has taken place. The current supervisor should confidentially send the current form and those for the preceding three (3) years with the individual's departmental file to the new supervisor.

Commonwealth Edison Company
1411 Opus Place
Downers Grove, IL 60515-5701

ComEd

October 19, 2000
SES-00-138

Mr. Martin Edwards
Quality Assurance Manager
U.S. Tool & Die Incorporated
200 Braddock Avenue
Pittsburgh, PA 15145

Subject: ComEd Follow-up response to your response (Ref. No.1) as a result of NUPIC and DSQG Audit, SR-2000-257 of U.S. Tool & Die (UST&D), Inc., Pittsburgh, PA Facility on June 19-23 and July 5-7, 2000

Reference: 1) UST&D Letter No. 00-0184 From V. Martin Edwards to Oscar Shirani, dated September 05, 2000

Dear Mr. Edwards:

I have reviewed your response as stated in the above Reference No. 1. You have provided the evidence of your corrective action and have indicated that some of the actions to be completed in future date. Your response to the Nine (9) Audit Findings sounds reasonable. However, the subject findings except the Finding No. SR-2000-257-03, which was closed during the audit, remains OPEN pending our verification of your completed corrective actions. Our newly elected Resident Inspector at UST&D, Mr. Roger Gillenwater will perform the follow-up of your corrective action and generate a response which will be concurred by me. Our follow-up will cover all your completed corrective action with a more rigor emphasis on your Special Processes and corrective action program which was determined to be ineffective by the audit team on June 19-23 and July 5-7, 2000.

The cooperation and assistance extended to the audit team by UST&D personnel during the audit is greatly appreciated.

Please refer questions to Oscar Shirani, ComEd Supplier Evaluation Services (SES), at Tel No. 630-663-5873

Prepared By: Oscar Shirani Date: 10/19/00
Oscar B. Shirani, PE
Audit Team Leader

Approved By: Date: 10/20/00
Russell Bastyr
Supplier Evaluation Services Manager

cc: Audit File SR-2000-257
Duplicate File
NUPIC Members

EXHIBIT 9

Exhibit/Business Unit Goal: Communication Skills

Importance: 10 % of Total Goals		Competencies Needed:		Goal Performance
Goal: Clear and concise communication Persuasive presentation Performance Measure: Meeting Results Achieved Mid-Year: On track Results Achieved End of Year:	+	Significant work needed here take right writing/ organization course	=	Mid-year: ☒ On Track ☐ Off Track Year-End: ☐ Distinguished Accomplishment ☐ Achieved Requirements ☐ More is Required

OVERALL PERFORMANCE RATINGS

Place an "X" in appropriate box.

[redacted]

PERFORMANCE FEEDBACK

Use this space for comments or feedback for Midyear, Ongoing, or Year-end Performance.

Supervisor Comments

Mid-Year: Oscar tries very hard and is extremely diligent. Should work on stronger communication skills.

Year End:

Signature: Ellen Cayo Date: 7/19/01

Employee Comments

Mid-Year:

Year End:

Signature: Oscar Silviano Date: